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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

MICHAEL JOHNSON,

Plaintiff and Appellant,

v.

CITY OF LONG BEACH et al.,

Defendants and Respondents.

B145679

(Super. Ct. No. NS006570)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Margaret M. Hay, Judge. Affirmed.

Law Offices of James E. Trott, James E. Trott and Larry J. Roberts for
Plaintiff and Appellant.

Robert E. Shannon, City Attorney, and Richard P. Lopez, Deputy City
Attorney, for Defendants and Respondents.

Michael Johnson, a police officer employed by the City of Long Beach (Long Beach), was terminated for misconduct and deficient work performance. On appeal, Johnson challenges the superior court's denial of his petition for a writ of mandate commanding the Long Beach Civil Service Commission (Commission) to set aside the termination, and to reinstate him. We affirm the superior court's ruling in its entirety.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Long Beach hired Johnson as a police officer in March 1990. After a *Skelly* hearing,¹ he was terminated from this position in October 1997.

Johnson challenged his termination before the Commission. Following an evidentiary hearing, the Commission sustained the termination, concluding that Johnson violated several provisions of the Long Beach Police Department Policy and Procedures Manual. The Commission found that Johnson had falsified his employee time records for five dates; failed to turn in his employee time records in a timely fashion on eight occasions; carried an unauthorized "ride-along" passenger in his patrol car while he was on duty; failed to file crime reports and other reports in a timely fashion; engaged in insubordination by failing to notify his supervisor that he had entered into an agreement to amend his work deficiencies; failed to file daily field activity reports between January 20, 1996, and May 15, 1996; and engaged in insubordination by failing to comply with an order to file a crime report.

¹ In *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, 203, the Supreme Court held that except in minor disciplinary matters, public employees are entitled to notice and an evidentiary hearing on disciplinary actions taken against them.

On October 16, 1998, Johnson filed a petition for writ of mandate to the superior court under Code of Civil Procedure section 1094.5. The superior court denied the petition on August 23, 2000. The pertinent minute order states: “The court has conducted its own independent review of the evidence, and finds that substantial evidence supports the agency’s findings. The Court further finds that the agency did not abuse its discretion in imposing the penalty imposed.”

DISCUSSION

Johnson contends that (1) substantial evidence does not support the superior court’s findings regarding the falsified employee time records and unauthorized ride-along passenger, and (2) the Commission abused its discretion in terminating him. We disagree.

A. Standards of Review

The standards governing our review of the superior court’s ruling depend on the nature of the challenge to this ruling.

To the extent that Johnson disputes the superior court’s findings, we observe that dismissals and suspensions imposed on public employees affect their fundamental vested right to their employment. (*McMillen v. Civil Service Com.* (1992) 6 Cal.App.4th 125, 128-129.) Accordingly, when the superior court examines administrative findings regarding such rights in ruling on a petition for administrative mandamus (Code Civ. Proc., § 1094.5), the superior court “exercises its independent judgment upon the evidence disclosed in a limited trial de

novo.” (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 143, fn. omitted; see *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 816-817 & fn. 8.)²

In turn, we review the superior court’s findings for the existence of substantial evidence. (*Fukuda v. City of Angels, supra*, 20 Cal.4th at p. 824.) Under this standard of review, we “consider the evidence in the light most favorable to the prevailing party, giving that party the benefit of every reasonable inference and resolving conflicts in support of the judgment. [Citation.]” (*Nordquist v. McGraw-Hill Broadcasting Co.* (1995) 32 Cal.App.4th 555, 561.)

Here, “substantial evidence” is not “‘synonymous with “any” evidence. It must be reasonable . . . , credible, and of solid value’ [Citation.]” (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633.) Furthermore, “the determination whether there was substantial evidence to support a finding or judgment must be based on the whole record.” (*Rivard v. Board of Pension Commissioners* (1985) 164 Cal.App.3d 405, 412.)

Nonetheless, “the power of an appellate court begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the determination [of the trier of fact], and when two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the [trier of fact].” (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874, italics omitted.)

To the extent that Johnson challenges the severity of the penalty imposed on him, we observe that “[d]iscretion in fixing the penalty for infractions is not vested

² Nonetheless, “[i]n exercising its independent judgment, a trial court must afford a strong presumption of correctness concerning the administrative findings, and the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are contrary to the weight of the evidence.” (*Fukuda v. City of Angels, supra*, 20 Cal.4th at p. 817.)

in the trial court. That discretion remains in the administrative body, and will not be disturbed unless there has been a manifest abuse of its discretion [citations].” (*Zink v. City of Sausalito* (1977) 70 Cal.App.3d 662, 665.) Thus, “[o]n appeal of a trial judge’s order granting or denying a writ of mandamus concerning the excessiveness of an administrative penalty, the appellate court, like the trial court, must review the agency’s determination de novo to determine whether there was an abuse of discretion. [Citations.]” (8 Witkin, Cal. Procedure (4th ed. 1997) Extraordinary Writs, § 287, p. 1091, italics omitted.)

B. Findings

Johnson concedes that most of the findings regarding his conduct are correct, and expressly challenges only the findings regarding the falsified employee time records and unauthorized ride-along passenger. However, because he also disputes other implied determinations in contesting the severity of the penalty imposed upon him (see pt. C., *post*), we summarize the totality of evidence presented to the Commission.

Long Beach submitted evidence supporting the following version of the underlying facts: In 1995, Police Sergeant David R. Kennison was Johnson’s supervisor. Kennison experienced numerous problems regarding Johnson’s work performance: he wore unauthorized boots, did not prepare reports in a timely manner, reported to work late, and abused sick time. At Kennison’s urging, Johnson entered into an agreement to amend work deficiencies on July 31, 1995. Under this agreement, which was effective until February 1, 1996, Johnson was obligated to correct the aforementioned problems, and to notify any future supervisor of the agreement while it remained operative.

Kennison carefully monitored Johnson’s conduct. Johnson’s performance improved until January 1996, when he was transferred to a new assignment under

the supervision of Police Sergeant Gary McAulay. Johnson never told McAulay about the agreement.

Police Lieutenant William Blair became Johnson's supervisor in mid-February 1996. Blair, who was also unaware of the agreement, noticed deficiencies in Johnson's performance, and he discussed them with Johnson. In April 1996, Police Sergeant Vernon Whybrew directed Johnson to file a report about a stolen boat, but Johnson never did so. During the same month, Police Sergeant William Sprague saw Johnson driving his patrol car with an unauthorized female passenger.

In May 1996, Blair returned from a leave of absence and learned about the incidents involving Whybrew and Sprague. Blair also learned that Johnson had failed to submit his employee time records for six to eight weeks of employment. Blair began an investigation, which determined that Johnson had failed to file 12 investigation reports in a timely fashion between February and May 1996.

Blair reported these problems to Police Lieutenant Phillip King, who directed Johnson to complete the missing employee time records quickly, but in an accurate manner. After Johnson completed the missing time records, it was discovered that in three instances, he claimed to have been working when in fact he had called in as sick or as suffering a death in the family, and that in two instances, he claimed to have been on holiday when in fact he had been scheduled for training or had called in as sick.

During the investigation of Johnson's conduct, Johnson attributed his poor performance to adult attention deficit disorder (ADD). After an evaluation of Johnson indicated that he was able to perform his duties as a police officer, Police Chief Robert Luman recommended that Johnson should be terminated.

Johnson, who testified on his own behalf, raised few factual disputes about Long Beach's showing. He stated that he forgot to tell McAulay about his

agreement with Kennison because the agreement was near its expiration date. Regarding the falsified time records, he stated that King told him to complete the missing records as soon as possible, that he had completed them from memory, and that any mistakes in them were inadvertent. He also conceded that he had carried his girlfriend in his patrol car as a passenger, but suggested that she did not fit the technical definition of a “ride-along,” namely, a citizen duly authorized to accompany police officers while they are on duty.

Johnson attributed his poor performance to untreated adult ADD.³ He presented testimony from Police Officer Robert E. Gonzales, who stated that Johnson’s performance as a police officer improved between September 1996 and September 1997, when Johnson was transferred to community policing and took Ritalin to control his alleged ADD. However, Johnson admitted during his own testimony that between October 1997 and June 1998, he had performed well in a hazardous position at an oil refinery, yet he had not taken any Ritalin during this period.

The record discloses a conflict of expert opinion about whether Johnson’s poor performance as a police officer was attributable to untreated adult ADD. Dr. Robin Klein, a clinical psychologist, opined that Johnson suffers from ADD, which impairs his ability to concentrate and to carry out tasks, and that his condition is treatable with Ritalin. Dr. Klein indicated that his opinion was corroborated by tests on Johnson performed at UCLA.

By contrast, Dr. Melvin Schwartz testified that Johnson displays antisocial personality disorder, which inclines him to ignore authority and obligations to others, but that Johnson was responsible for his conduct as a police officer. Dr. Schwartz stated that although Johnson may also have a mild form of ADD,

³ Johnson acknowledged that he sometimes drank excessive amounts of alcohol during the pertinent period, but he denied that this activity impaired his police work.

it did not affect his capacity to perform as a police officer. He indicated that Johnson's ability to fill the position at the oil refinery without Ritalin treatment was inconsistent with longstanding and significant ADD.

In view of this record, ample evidence supports the findings that Johnson challenges. Regarding the time records, there is substantial evidence that Johnson was directed to complete the missing records accurately by consulting with appropriate records and people, but he nonetheless placed false information on them. Furthermore, regarding the ride-along passenger, Johnson's own testimony indicates that he lacked any authorization to drive his girlfriend to lunch in his patrol car.

C. Penalty

Johnson contends that the Commission abused its discretion by imposing an excessively severe penalty, namely, termination.

Generally, "[i]n considering whether such abuse occurred in the context of public employee discipline, we note that the overriding consideration in these cases is the extent to which the employee's conduct resulted in, or if repeated is likely to result in, 'harm to the public service.' [Citations.] Other relevant factors include the circumstances surrounding the misconduct and the likelihood of its recurrence. [Citation.]" (*Skelly v. State Personnel Bd.*, *supra*, 15 Cal.3d at p. 218.)

Johnson argues that the Commission abused its discretion in terminating him, arguing that none of his misconduct directly endangered the public, and that his misconduct was due to treatable ADD. We disagree.

As we have explained (see pt. B., *ante*), the evidence is in conflict as to whether Johnson's misconduct stemmed from untreated ADD. In concluding that Johnson was properly terminated, the Commission and the superior court impliedly rejected Johnson's contention regarding this factual matter. Their

determinations are adequately supported by the testimony of Dr. Schwartz, who indicated that Johnson was responsible for his misconduct, and that this misconduct was not due to ADD.

Furthermore, the record contains undisputed evidence that Johnson's failure to file reports impeded police investigations. This evidence, coupled with the other findings, indicates that he lacked the judgment and sense of responsibility required of a police officer. In view of the gravity and persistence of Johnson's misconduct, we conclude that the Commission did not err in terminating Johnson.

In sum, the Commission did not abuse its discretion in determining the appropriate penalty.

DISPOSITION

The judgment is affirmed.

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CURRY, J.

We concur:

VOGEL (C.S.), P.J.

HASTINGS, J.